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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	NO. CR 13-720 CRB
)	
Plaintiff,)	UNITED STATES' RESPONSE TO
)	DEFENDANT'S SENTENCING
v.)	MEMORANDUM
)	
PAUL SLOANE DAVIS,)	
)	
Defendant.)	

Defendant's sentencing memorandum raises two frivolous objections to the Guidelines calculations in the PSR. Dkt 67 at 6–7. Defendant argues that the enhancements for number of victims and a vulnerable victim should not apply because those were neither elements of the offense nor allegations in the indictment to which defendant pleaded guilty. *Id.*

Defendant's objections are untimely and should not be considered by the Court. The Probation Officer issued the draft PSR in this case almost three months ago, on May 27, 2015. The United States provided the Probation Officer with a response that same day. According to the PSR, however, defense counsel provided no response at any time to the draft PSR. *See* PSR, Addendum. The final PSR was submitted to the parties on June 17, 2015, a full two months ago.

Defendant thus failed to comply with Criminal Local Rule 32-4(b) and (c), which requires the parties to respond to draft PSRs within 14 days of disclosure. The Court's rule requires a party's

1 response to “identify and address any objections to factual statements or guideline computations.” Crim.
 2 L.R. 32-4(c)(2); *see also id.* (requiring party to “[s]tate any variation the party contends should be made
 3 from the guideline computation recommended in the proposed presentence report”).

4 This is not merely a technical requirement. To the extent that the reason for this requirement is
 5 not self-evident, the commentary to the Local Rule makes it clear: “This rule is intended to implement
 6 the informal process of identifying and narrowing issues that will ultimately require judicial resolution.”
 7 *Id.* (Commentary). This makes good sense. Providing timely objections to the calculations—indeed
 8 providing objections at any time prior to sentencing, whether timely or not—serves to “identify[] and
 9 narrow[]” the issues for sentencing, and allows the government to prepare for an evidentiary hearing if
 10 one will be necessary to establish relevant conduct.

11 The Commentary to Local Rule 32-4 notes that there is a sanction for a party’s failure to comply
 12 with its requirements. That Commentary warns that “objections not raised to the Probation Officer may
 13 not be considered by the Court absent a showing of good cause.” Crim. L.R. 32-4(c) (Commentary).
 14 This echoes Rule 32(i)(1)(D), which provides that, at sentencing, the Court “may, for good cause, allow
 15 a party to make a new objection at any time before sentence is imposed.” Fed. R. Crim. P. 32(i)(1)(D).

16 Defendant has not, and could not, offer good cause for failing for months to object to two
 17 enhancements plainly stated in the Guidelines calculations of the PSR. Moreover, these enhancements
 18 are overwhelmingly supported by evidence disclosed to defendant through discovery, the facts as
 19 reported throughout the PSR, and, with respect to the total number of victims, co-conspirator Cobb’s
 20 plea agreement. *See* PSR ¶¶ 10, 13, 16; dkt. 29 at 3, 5 (Cobb plea agreement). Though the government
 21 can establish the facts supporting these enhancements with testimony at an evidentiary hearing if the
 22 Court requires, the government requests that the Court instead disregard these late objections.

23
 24 DATED: August 17, 2015

Respectfully submitted,

25 MELINDA HAAG
 26 United States Attorney

27 _____/s/
 28 BENJAMIN KINGSLEY
 Assistant United States Attorney